

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 18,852
	)	
Appeal of	)	
	)	

INTRODUCTION

The petitioner appeals the decision by the Department of Prevention, Assistance, Transition, and Health Access (PATH) denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-four-year-old man with a tenth grade education. His work history is in construction labor. He last worked in 2002.

2. The petitioner suffers from chronic heart problems. He underwent coronary artery bypass surgery in October 2000 in an attempt to relieve severe pain he was suffering at that time. Since that time the medical record shows that he has suffered continuing pain upon even mild exertion.

3. In a letter dated July 2, 2003, the petitioner's primary treating physician reported the following to an attorney representing the petitioner in a Social Security hearing:

At the present time he has exertional pain with minimal exertion, which prohibits him from working. His chest pain is a squeezing type of pain in the mid-precordial

region and is relieved by rest, although it is not clearly quickly responsive to nitrates. However, the pain resolved so promptly after resting, it is difficult for him to tell whether the NTG has a chance to work. He sometimes gets radiation of the pain to the right arm, and he sometimes has associated diaphoresis and dyspnea. Sometimes his pain is related to emotional upset, but usually it is predictably precipitated by exertion. Since his bypass operation, he has gone on to become overtly diabetic and is on medications for this. During an office visit on 6/30/04, he had chest pain on walking into the office from his car. Although there are some atypical qualities to his chest pain, I think given his multi-vessel CAD and the exertional nature of his pain, I do believe he is experiencing angina, and I do believe that he has a listing level of severity for Social Security Disability.

4. In a letter dated March 17, 2004, the treating physician offered the following update:

Please see my letter of July 2, 2003, for a previous description of [petitioner's] disabling medical condition. Since that time, he underwent cardiac catheterization by [doctor], who found three-vessel coronary disease and a patent LIMA graft to the LAD and a patent saphenous vein graft to the OM 2, as well as some elevated end diastolic pressure. [Doctor] is convinced that [petitioner] is having disabling chest pain but that it is post-operative, post-surgical pain, rather than necessarily being ischemic in origin, given the fact that he has patent grafts.

[Petitioner] reports to me that he has been having episodes of nocturnal pain for some time, which I did not describe in my original note, and this has been occurring since he had surgery. These episodes occur one to two times a night, lasting for 15-30 minutes, and generally resolving on their own. He also has exertional pain with minimal exertion, as described in the previous letter.

Despite the atypical nature of the pain and the fact that it may not be ischemic in origin, he still clearly has disabling chest pain. This pain has caused major lifestyle change, in that he has had to give up almost all activities that involve even mild amounts of exertion, and it clearly is disabling, narcotic-dependent pain.

I hope this clarifies any further issues that are

impeding his qualification for disability benefits.

5. In a note dated April 7, 2004, the treating physician repeated his opinion that the petitioner is disabled and noted that the petitioner will require "chronic narcotic therapy".

6. Most recently, in a note dated May 3, 2004 the treating physician noted that the petitioner's chest pain is not well-controlled, and that even on narcotics his pain occurs upon the most minimal exertion.

7. Based on the above observations and opinions, which are uncontroverted by any evidence in the medical record, it must be found that the petitioner is incapable of performing even the slightest exertional activity, much less gainful employment on a regular and sustained basis.

#### ORDER

The decision of the Department is reversed.

#### REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Individuals age 18 or older are considered disabled if they are unable to engage in any substantial gainful activity because of any medically determinable physical or mental impairment, or combination of impairments, that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not fewer than 12 months. To meet this definition, individuals must have a severe impairment, which makes them unable to do their previous work or any other substantial gainful activity which exist in the national economy. To determine whether individuals are able to do any other work, the disability determination unit considers their residual functional capacity, age, education, and work

experience.

Based on the uncontroverted opinions of his treating physician (*supra*) it must be concluded that the petitioner fully meets this definition. There is no question that the petitioner cannot perform his former work as a construction laborer and the Department has not suggested, much less met its burden to establish, that there is any other job the petitioner could conceivably perform in light of his chronic pain and limited education.

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